

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, *et al.*

Plaintiffs,

vs.

TYSON FOODS, INC., *et al.*

Defendants.

Case No. 05CV0329GKF-PJC

SEPARATE DEFENDANT GEORGE’S, INC. AND GEORGE’S FARMS INC.
MOTION FOR PROTECTIVE ORDER REGARDING CERTAIN FINANCIAL
DOCUMENTS, AND INTEGRATED BRIEF IN SUPPORT THEREOF

Come now the separate Defendants, George’s, Inc. and George’s Farms, Inc. (George’s), and for their Motion for Protective Order regarding their confidential financial documents, states as follows, to-wit:

On July 10, 2006, the State of Oklahoma requested that George’s produce financial documents and materials; George’s responded by objecting to disclosure of these private and confidential documents. [Dkt. #1867-2, Ex. A]. Without a meet and confer or seeking to compel further information from George’s, the State served a subsequent Request for Production over a year later on September 13, 2007, and George’s reiterated the same objections. [Dkt. #1867-2, Ex. B].

Again without further meet and confer or seeking the compulsion of further information, the State finally, in late October 2008, mailed a list to George’s counsel which claimed to “narrow” the scope of the financial discovery requested. [Dkt. #1867-2, Ex. C]. In fact, this list actually sought a wider range of financial documents than previously requested by way of the formal written discovery. The State and George’s conducted a meet-and-confer process during November and early December of 2008. During this process, an agreement was reached in which a full disclosure

of George's net worth and balance sheets over a 5-year period would satisfy the State's request, conforming to precedents in the Northern District of Oklahoma. George's, without waiving objections, produced its net worth on December 8, 2008 through the production of Balance Sheets for the years 2004-2008. [Dkt. Nos. 1879-2 and 1879-3, Exs. A and B¹.]

Unfortunately, the State claimed that it was unsatisfied with this production and reneged on its agreement with George's. In a continued good-faith effort to continue to avoid the Court's intervention, George's produced its Income Statements, again without waiving its objections and designating such material as confidential and attorney's eyes only. These were produced to the State on January 2, 2009. [Dkt. Nos. 1879-4 and 1879-5, Exs. C and D².] Ultimately, the State still claimed that this second production failed to satisfy their discovery requests in the case, and without further meet and confer, filed a Motion to Compel George's to produce additional financial information, including cash flow statements. [Dkt. #1867]. George's filed a response in opposition along with a Motion for Protective Order regarding these confidential financial documents. [Dkt. Nos. 1879 and 1887].

After full briefing on the issues and following a hearing on March 2, 2009, the Magistrate Judge issued a written Order finding that George's had provided more than ample information for the State to possess a clear understanding of George's financial situation, and that George's was entitled to a Protective Order for anything requested by the State beyond the net worth for the two George's corporations named as defendants in the case. [Dkt. #1920]. The Court held that George's

¹ Due to the highly confidential nature of the information contained in George's Net Worth and Balance Sheets, a copy of this exhibit was provided to the Court under a separate cover for an *in camera* review on February 22, 2009, pursuant to Paragraph 6 of the Confidentiality Order (Dkt. #985).

² Due to the highly confidential nature of the information contained in George's Income Statements, a copy of this exhibit was provided to the Court under a separate cover for an *in camera* review on February 22, 2009, pursuant to Paragraph 6 of the Confidentiality Order (Dkt. #985).

should produce the most recent audited net worth information for each of the two George's defendants. [Dkt. #1920]. The Magistrate found that the State had overreached in its requests for financial information, stating in its Order that the Court had, "serious concerns that the discovery process is being used for improper purposes here. The breadth of information sought ... goes far beyond what is reasonable under any interpretation of the law. Courts are wary of oppressive or needlessly invasive financial discovery." [Dkt. #1920 at 9].

Implicit in this holding was the fact that the State is not entitled to retain possession of George's Income Statements produced on January 2, 2009. These were clearly identified to the State as confidential and attorney's eyes only at the time of production, and all parties have consistently treated them as such. Accordingly, on April 9, 2009, counsel for George's demanded the prompt return of all of the Income Statements produced to the State, as well as the Balance Sheets for the years 2004 – 2007, which years were not part of George's "most recent" audited Balance Sheet. George's made this demand based upon this Court's Protective Order regarding the State's improper request for George's financial documents other than "current net worth information" contained within its 2008 Balance Sheet information. [Ex. A to this pleading and Dkt. #1920 at 10, respectively]. Over a month later, the Plaintiffs have not responded to this demand.

Rather, the State has since produced an untimely updated financial report on April 14, 2009 relying upon these very Income Statements and older Balance Sheets . [Dkt. #1992-3, Ex. C³]. This revised supplemental report was prepared and produced over three months after Mr. Payne's expert deadline and also over three months after he received the Income Statements, the incorporation of

³ Due to the highly confidential nature of the information contained in Payne's supplemental report, a copy of this exhibit was provided to the Court under a separate cover for an *in camera* review on April 22, 2009, pursuant to Paragraph 6 of the Confidentiality Order (Dkt. #985).

which constitutes the only substantive changes from his timely January 5, 2009 report. [Dkt. #1992-2, Ex. B⁴].

George's requests that this Court either (1) clarify that its previous Protective Order [Dkt. #1920] related to the return of George's financial information beyond its most recent net worth as reflected in its most recent audited balance sheet, or (2) grant the instant Motion and instruct the Plaintiffs to immediately return all originals and copies of George's confidential financial documents which the Magistrate determined were not discoverable in the first place (specifically all Income Statements and the unaudited Balance Sheets from 2004 – 2007, the latter of which the State has claimed are inappropriate for use anyway because they are unaudited and do not comply with GAAP) . Moreover, George's is entitled to a Protective Order prohibiting the issuance of the April 14, 2009 report based in part upon such non-discoverable information, and prohibiting any further reports which are based on, rely on or otherwise utilize such non-discoverable financial information.

IV. Conclusion

WHEREFORE, PREMISES CONSIDERED, George's respectfully requests that this Court grant George's Motion for a Protective Order, order the return of all originals and copies of George's confidential financial documents deemed as not-discoverable, and further prays for any and other relief to which it may be entitled.

⁴ Due to the highly confidential nature of the information contained in Payne's original report, a copy of this exhibit was provided to the Court under a separate cover for an *in camera* review on April 22, 2009, pursuant to Paragraph 6 of the Confidentiality Order (Dkt. #985).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 13th day of May, 2009, I electronically transmitted the attached document to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service,
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